

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



FILED
10-03-16
04:59 PM

Order Instituting Rulemaking to Examine
the Commission's Energy Efficiency
Risk/Reward Incentive Mechanism.

Rulemaking 09-01-019
(Filed January 29, 2009)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES
AND THE UTILITY REFORM NETWORK ON
PROPOSED DECISION ADOPTING SETTLEMENT AGREEMENT**

ELISE TORRES
Attorney for

THE UTILITY REFORM NETWORK
785 Market Street, Suite 1400
San Francisco, CA 94103
Telephone: (415) 929-8876, Ext. 308
Facsimile: (415) 929-1132
Email: etorres@turn.org

DIANA L. LEE
Attorney for the

OFFICE OF RATEPAYER ADVOCATES
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-4342
Email: diana.lee@cpuc.ca.gov

October 3, 2016

TABLE OF CONTENTS

	<u>Pages</u>
I. INTRODUCTION.....	1
II. DISCUSSION.....	1
A. BACKGROUND	1
B. THE PROPOSED DECISION CORRECTLY CONCLUDES THAT THE SETTLEMENT AGREEMENT IS IN THE PUBLIC INTEREST.	4
III. CONCLUSION	4

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practices and Procedure of the California Public Utilities Commission (Commission), the Office of Ratepayer Advocates (ORA) and The Utility Reform Network submit these comments on Administrative Law Judge (ALJ) Kevin Dudney's September 12, 2016 *Proposed Decision Adopting Settlement Agreement* (Proposed Decision or PD). ORA and TURN support the Proposed Decision, which would approve the joint settlement that ORA, TURN, and Southern California Edison Company (SCE) executed in order to resolve all issues related to SCE's 2006-2008 energy efficiency portfolios, including those arising from the rehearing ordered in Decision (D.) 15-09-026¹, (Settlement Agreement).² ORA and TURN agree that the Settlement Agreement is reasonable and in the public interest, and therefore respectfully request that the Commission approve the PD.

II. DISCUSSION

A. Background

D.15-09-026 granted applications for rehearing of three decisions that awarded shareholder incentives to SCE and the other investor-owned utilities for energy efficiency savings achieved between 2006-2008, pursuant to the Commission's "Risk/Reward Incentive Mechanism" (RRIM). The Commission approved interim RRIM awards in D.08-12-059 and D.09-12-045, and finalized the RRIM payments in D.10-12-049. The three decisions awarded shareholder incentives totaling \$211,853,077 to utilities participating in the RRIM,³ including \$74,443,994 to SCE.⁴

¹ D.15-09-026, *Order Granting Rehearing of Decisions 10-12-049, 09-12-045 and 08-12-059 and Consolidating Rehearings, Modifying Rulemaking 09-01-019 and Denying Rehearing of Rulemaking, and Denying Request for Official Notice*, September 22, 2015.

² "Nothing in the Settlement or in this decision constitutes precedent with respect to disposition of any pending issues in this rehearing applicable to any IOU other than PG&E." PD, p. 2.

³ In addition to SCE, the other beneficiaries of the RRIM were Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal Gas), and San Diego Gas & Electric Company (SDG&E). The Commission approved a settlement between ORA, TURN and PG&E in D.16-09-???,
(continued on next page)

ORA⁵ and TURN filed an application for rehearing of D.08-12-059.⁶ on February 2, 2009. TURN filed an application for rehearing of D.09-12-045,⁷ on January 28, 2010, and ORA and TURN filed an application for rehearing of D.10-12-049 on January 26, 2011.⁸ ORA and TURN each filed petitions for modification of D.10-12-049 on November 19, 2014. D.15-09-026 granted rehearing, requiring that:

“The rehearing proceeding shall ensure that all money awarded by Decision 08-12-059, Decision 09-12-045, and D.10-12-049, to Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company are just and reasonable and based on calculations verified by the Commission, via its Energy Division, pursuant to the directives and process adopted in Rulemaking 06-04-010 and Rulemaking 09-10-019 as modified. The rehearing proceeding shall also consider whether refunds if any, of awards based on unverified claims are due and, if so, how such refunds, if any, shall be conducted.”⁹

(continued from previous page)

which resolved all issues related to PG&E’s 2006-2008 energy efficiency portfolios, including those arising from the rehearing ordered in D.15-09-026. The PD points out that the proposed settlement between ORA, TURN and SCE only resolves pending issues raised by D.15-09-026’s grant of rehearing of the three RRIM decisions as they relate to SCE.

⁴ D.10-12-049, *Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008*, December 27, 2009, p.

⁵ Some prior pleadings were filed by the Division of Ratepayer Advocates, which was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96. For the sake of simplicity, ORA and TURN’s PD comments refer exclusively to ORA.

⁶ D.08-12-059, *Decision Granting in Part and Denying in Part the Petition for Modification*, January 2, 2009.

⁷ D.09-12-045, *Decision Regarding RRIM Claims for the 2006-2008 Program Cycle*, December 29, 2009.

⁸ D.10-12-049, *Decision Regarding the Risk/Reward Incentive Mechanism Earnings True-Up for 2006-2008*, December 27, 2009. The application for rehearing of D.08-12-059 was filed in Rulemaking 06-04-010. The subsequent applications for rehearing as well as the two petitions for modification were filed in R.09-01-019.

⁹ D.15-09-026, Ordering Paragraph 6, p. 13.

After the grant of rehearing, ORA and TURN filed a joint proposal¹⁰ and joint comments¹¹ contending that the Commission should order SCE to return the \$39,874,716 award of \$104.1 to ratepayers, given SCE's failure to meet all of the metrics established by the RRIM, consistent with the process established in D.07-09-043 and modified in D.08-01-042. SCE's proposal¹² and comments¹³ stated that The RRIM awards were just and reasonable, and that the Commission's modifications of the RRIM were justified. SCE therefore contended that it should retain the entire \$74,443,994 in RRIM awards.

Despite these significant differences, ORA, TURN, and PG&E negotiated the Settlement Agreement, pursuant to which SCE agreed to return \$13.5 million to ratepayers. SCE agreed to implement the return of funds over a three-year period through credits to SCE's Base Revenue Requirement Balancing Account (BRRBA) in three installments of \$4.5 million. The first credit will be made within thirty (30) calendar days of the approval of the Settlement or the Commission's approval of SCE's 2016 energy efficiency performance awards pursuant to the Efficiency Savings and Performance Incentive (ESPI) mechanism, whichever comes later. Second and third refund credits shall be made not later than 30 days following approval of SCE's 2017 and 2018 ESPI (or subsequent incentive mechanism) earnings. SCE may accelerate the refund.

ORA, TURN and PG&E filed a motion requesting Commission approval of the Settlement Agreement on June 24, 2016. No parties filed an opposition to the motion requesting Commission approval of the Settlement Agreement.

¹⁰ *The Office of Ratepayer Advocates and The Utility Reform Network's Proposal to Resolve Risk/Reward Incentive Mechanism Issues*, March 18, 2016.

¹¹ *The Office of Ratepayer Advocates and The Utility Reform Network's Comments On Proposals To Resolve Risk/Reward Incentive Mechanism Issues*, April 8, 2016.

¹² *Southern California Edison Company's (U 338-E) Proposal to Resolve Issues in Scope in Compliance with Assigned Commissioner And Administrative Law Judge's Amended Scoping Memo And Ruling*, March 18, 2016.

¹³ *Southern California Edison Company's (U 338-E) Opening Comments on Proposals to Resolve Issues in Scope in Compliance with Assigned Commissioner and Administrative Law Judge's Amended Scoping Memo And Ruling*, April 8, 2016.

B. The Proposed Decision Correctly Concludes That The Settlement Agreement Is In The Public Interest.

The PD correctly concludes that the Settlement Agreement is consistent with the law, and in the public interest. No parties opposed the Settlement Agreement. One factor weighing in favor of approving the Settlement Agreement is the fact that the parties involved had positions during the proceeding that were far apart and were able to resolve their significant differences. The PD points out that:

“A critical factor in our decision to adopt this settlement is confidence that it is fairly reflective of the affected interests. Here, the settlement is sponsored by the affected public utility and two well-recognized consumer interest groups. These parties represent the range of interests that have been at issue throughout the dispute regarding PG&E’s 2006-2008 RRIM awards. The fact that these parties all recommend adoption of the settlement convinces us that the settlement is “fairly reflective of the affected interests.”¹⁴

Moreover, the PD notes that resolving disputes through settlements conserves finite resources, reduces the costs of litigation, and allows parties to reduce the risk of unacceptable outcomes that may result from litigation. Given the passage of time and changes to the energy efficiency programs since 2006-2008, the PD found that that the Settlement Agreement was an appropriate resolution of RRIM issues as they pertain to SCE.

III. CONCLUSION

ORA and TURN recommend that the Commission adopt the Proposed Decision. Doing so would conserve the resources of the settling parties and also Commission staff, and would allow SCE ratepayers to benefit from offsets to the ESPI awards of \$13.5 million.

¹⁴ PD, p. 11.

Respectfully submitted,

/s/ ELISE TORRES

ELISE TORRES
Attorney for

THE UTILITY REFORM NETWORK
785 Market Street, Suite 1400
San Francisco, CA 94103
Telephone:(415) 929-8876, Ext. 308
Facsimile:(415) 929-1132
Email:etorres@turn.org

/s/ DIANA L. LEE

DIANA L. LEE
Attorney for the

OFFICE OF RATEPAYER ADVOCATES
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-4342
Email: diana.lee@cpuc.ca.gov

October 3, 2016